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A-533, Feb. 7, 1952

Subject: Proposed FCN Treaty with Japan.

As forecast in Department's instruction No. 63 of November 1, 1951, the Department desires a few amendments in the standard draft. They are listed below. The Mission is authorized to propose their inclusion in the draft at a convenient time.

(1) Article III, paragraph 2. At the end of the last sentence add the words "of his choice". These words merely make explicit the implicit right of an accused person to select the attorney whom he wishes to engage to defend him. The National Foreign Trade Council, in a recent review of the Department's treaty program, recommended this addition as a standard feature of future treaties.

(2) Article X. Designate the present material as paragraph "1", and add a new paragraph as follows:

"2. The Parties undertake to cooperate in furthering the interchange and use of scientific and technical knowledge, particularly in the interests of increasing productivity and improving standards of living within their respective territories."

This paragraph, which is self-explanatory, is also to be "standard" hereafter.

(3) Article XIX, paragraph 6. As already suggested in a previous airgram, revise the words "paragraph 5" in the fourth line to read "paragraphs 2 and 5".

(4) Protocol. Add a new paragraph in the following terms:

"With reference to Article XIV, paragraph 4, it is

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understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods which are not marked in such a manner as to indicate the name of the country of origin of such goods, or which are so labeled, marked or otherwise identified as to create misrepresentation or false impression as to their true geographic or commercial origin. Furthermore, each Party agrees to take appropriate steps to prevent misrepresentations, direct or by implication, that goods produced or sold in or exported from its territory originate within the territory of the other Party or any distinctive place within such territory or are the product of a national or company of such other Party."

The proper position for this provision will be between present paragraphs 3 and 4. It may therefore be temporarily identified as paragraph "3-bis", until given its correct final number upon completion of the negotiation.

As will be apparent, this new provision is derived from a suggestion previously advanced by the Japanese: namely, Article XXVII of the draft which the Japanese prepared. Although material of this sort has not heretofore been standard in US treaty practice, the Department sees considerable merit in so much of the Japanese suggestion as is reflected in the proposal set out above, and trusts that the Japanese will be disposed to favor it in this form. The Department believes that the provision would be in the interests of good public relations, inter alia. It will be noted that the terms of the Department's proposal are not in all details identical with the original Japanese Article XXVII, for reasons stated in the memorandum attached to the aforementioned Instruction No. 63.

The Mission will no doubt be interested in the news that the House and Senate Judiciary Committees have both now favorably reported out the immigration bills mentioned in previous communications.

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